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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/028,638

12/19/2001

Richard A. Kollaja

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01/28/2004

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EXAMINER

ZIRKER, DANIEL R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 11/12/03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-18 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-18 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit 1771

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-18 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, applicant's recent claim amendments (page 6, first complete paragraph) of "layers of fibers" and "fibers" for what the Examiner believes was perfectly acceptable terminology in respect to the previously used "layers that are discontinuous in the cross-web direction" and "phases" is rejected, since although it is believed more than ample inherent support exists, ^{and} the referred to sections in the specification such as at page 4, lines 11-16 and elsewhere barely, if at all, mention applicant's newly used terminology. Additionally, it is not believed that "fibers" is defined in the specification, and as such the Examiner respectfully submits that the originally used language be reinserted back into the claims. Also, it is further noted that in claim 12, line 1 it is suggested to insert "further" after "layers".

3. Claims 1-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over either the English translation of DE -452 or WO -857, each taken in view of either Wyeth et al. or Schrenk et al., each taken as evidence of the state of the art, substantially for the reasons set forth in paragraph Nos. 6 and 7

Art Unit 1771

of the prior Office action, together with the following additional observations. To somewhat reiterate, both DE -452 and WO -857 disclose, in certain embodiments, polymeric co-extruded multilayer webs such as applicant claims which are made from a variety of thermoplastic and other well known polymers that can include adhesives and the like, and can be arranged in a wide variety of laminated embodiments such as those applicant claims. With respect to the broad genres of embodiments that are claimed in at least one of the dependent claims (as well as newly presented independent claim 15) these are believed merely to recite a wide variety of generic compositions and related species as well as layers and other conventional structures in the art whose selection is but an obvious design choice of one of ordinary skill. Note again the secondary references with respect to the state of the art which clearly indicate that a particular co-extruded web structure involving a desired number of layers which are either continuous or "discontinuous" (i.e. fiber containing) in a selected direction and may further utilize a plurality of distinct phases, are each believed to be parameters that are well within the ordinary skill of the art.

Applicant has argued (Response, paragraph bridging pages 6 and 7) that although they agree that both references teach polymeric co-extruded multilayer webs, WO -857 utilizes a tie layer to bond his first and second polymers, and that there

Art Unit 1771

is no disclosure of a pressure sensitive adhesive in either reference. However, the Examiner respectfully notes that pressure sensitive adhesives can be utilized as both tie layers or "glue" and further notes that adhesives are taught, it is believed in all four references (note, e.g. WO -857, page 27, lines 27-29~~3~~ as teaching a "glue") which is believed more than adequate to ^{teach} the concept of the well known pressure sensitive adhesives within the skill of the art. With respect to applicant's remarks (Response, page 8, bottom paragraph) that neither Wyeth et al. nor Schrenk et al. teach the particular claimed embodiments, ~~but~~ the Examiner must respectfully note that each of these references is relied upon only to show that thermoplastic materials can be made of a variety of layers and can be formed with a variety of fluid passageways and "a pattern of interconnected or disconnected projections, grooves, embossed pits, valleys or corrugations in one or . . . sheets" (Wyeth et al., column 2 lines 58-63) and Schrenk et al. discloses (e.g. column 12 lines 20-24) a "wide variety of structures may be produced. Particularly beneficial and advantageous are . . . films, coatings, rods and filaments which are prepared by employing diverse thermoplastic resinous materials in adjacent layers to provide . . . body". Finally, with respect to applicant's contention that he has discovered unexpected results the Examiner simply notes that no such comparison has been made

Art Unit 1771

against the closest prior art, i.e. the reference combinations relied upon and as such it is respectfully submitted that applicant has failed to rebut the prima facie case of record.

4. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel

Serial No. 10/028,638

-6-

Art Unit 1771

Zirker whose telephone number is (571) 272-1486. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-0994.

Dzirker:cdc

January 21, 2004

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1300-
1700

Daniel Zirker